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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 456.

(32,908)

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, PETITIONER,

VERSUS

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

REPLY OR SUPPLEMENTAL BRIEF FOR PETITIONER.

We wish to add to our former brief the following extracts from decisions on

RULES AND CONSTRUCTION.

Cohens vs. Va., 6 Wheat, 354, 355, 357, 398, 399:5 L. Ed. 279, 289, 290.

In this case Mr. Pinckney, in his argument, says at p. 354, L. Ed. 279:

> It is an axiom of political science, that the judicial power of every government must be commensurate with its legislative authority; it must be adequate to the protection, enforcement and assertion of all the other powers of the government.

And again at p. 357, L. Ed. p. 279:

> The actual constitution of this country is not a government of confidence; it is a scheme of government conceived in the spirit of jealousy, and rendered adequate to all its own purposes, by its own means; and the judicial power of the Union is the principal means of giving effect to it. This it is which distinguishes it from the confederation. Experience has shown the necessity and wisdom of this provision.

The Court, in its opinion by Chief Justice Marshall, at p. 398, L. Ed. p. 289, says:

> It is, we think, apparent, that to give this distributive clause the interpretation contended for, to give to its affirmative words a negative operation, in every possible case, would, in some instances, defeat the obvious intention of the article. Such an interpretation would not consist with those rules which, from time immemorial, have guided courts, in their construction of instruments brought under their consideration. It must, therefore, be discarded. *Every part of the article must be taken into view, and that construction adopted which will consist with its words, and promote its general intention. The court may imply a negative from affirmative words, where the implication promotes, not where it defeats the intention.*

And again at p. 399, L. Ed. 290:

> "It is a maxim, not to be disregarded, *that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision.* The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated."

This last paragraph is reiterated and approved in *Downes vs. Bidwell*, 182 U. S. 258-9: 45 L. Ed. 1095, opinion delivered by Mr. Justice Brown.

Minneapolis & St. L. R. Co. vs. Bombolis, 241 U. S. 221-2:60 L. Ed. 965, opinion by Chief Justice White.

Moreover, the proposition is in conflict with an essential principle upon which our dual constitutional system of government rests; that is, that lawful rights of the citizens, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them.

Martin vs. Hunter's Lessee, 1 Wheat. 335-7:4 L. Ed. 105, opinion by Story, Judge.

The vital importance of all the cases enumerated in the first class to the national sovereignty, might warrant such a distinction. In the first place, as to cases arising under the constitution, laws, and treaties of the United States. *Here the state courts could not ordinarily possess a direct jurisdiction.* The jurisdiction over such cases could not exist in the state courts previous to the adoption of the constitution, and it could not afterwards be directly conferred on them; for the constitution expressly requires the judicial power to be vested in courts ordained and established by the United States. This class of cases would embrace civil as well as criminal jurisdiction, and affect not only our internal policy, but our foreign relations. It would, therefore, be perilous to restrain it in any manner whatsoever, inasmuch as it might hazard the national safety. The same remarks may be urged as to cases affecting ambassadors, other public ministers, and consuls, who are emphatically placed under the guardianship of the law of nations; and as to cases of admiralty and maritime jurisdiction, the admiralty jurisdiction embraces all questions of prize and salvage, in the correct adjudication of

which foreign nations are deeply interested; it embraces also maritime torts, contracts, and offenses, in which the principles of the law and comity of nations often form an essential inquiry. All these cases, then, enter into the national policy, affect the national rights, any may compromit the national sovereignty. The original or appellate jurisdiction ought not, therefore, to be restrained, but should be commensurate with the mischiefs intended to be remedied, and, of course, should extend *to all cases whatsoever.*

A different policy might well be adopted in reference to the second class of cases; for although it might be fit that the judicial power should extend to all controversies to which the United States should be a party, yet this power might not have been imperatively given, lest it should imply a right to take cognizance of original suits brought against the United States as defendants in their own courts. It might not have been deemed proper to submit the sovereignty of the United States, against their own will, to judicial cognizance, either to enforce rights or to prevent wrongs; and as to the other cases of the second class, they might well be left to be exercised under the exceptions and regulations which Congress might, in their wisdom, choose to apply. It is also worthy of remark that Congress seem, in good degree, in the establishment of the present judicial system, to have adopted this distinction. In the first class of cases, the jurisdiction is not limited except by the subject-matter; in the second, it is made materially to depend upon the value in controversy.

We do not, however, profess to place any implicit reliance upon the distinction which has here been stated and endeavored to be illustrated. It has the rather been brought into view in deference to the legislative opinion, which has so long acted upon, and enforced, this distinction. *But there is, certainly, vast weight in the argument which has been urged, that the constitution is imperative upon Congress to vest all the judicial power of the United States, in the shape of original jurisdiction, in the supreme and inferior courts created under its own authority.* At all events, whether the one construction or the other prevail, it is manifest that the judicial power of the United States is unavoidably, in some cases, exclu-

sive of all state authority, and in all others, may be made so at the election of Congress.

In construing a statute, the Court is not to look at any single phrase in it, but to its whole scope, in order to arrive at the intention of the makers of it. *Heydenfeldt vs. Mining Co.*, 93 U. S. 639-41:23 L. Ed. 966-7. In the opinion in this case, by Mr. Justice Davis, the Court says, in construing a statute:

> This interpretation, *although seemingly contrary to the letter of the statute, is within its reason and spirit.* It accords with a wise public policy, gives to Nevada all she had any right to ask for, and acquits Congress of passing a law which in its effects would be unjust to the People of the Territory. Besides, no other construction is consistent with the statute as a whole, and this alone answers the evident intention which the makers of it had in view, and this was to grant to the State in praesenti a quantity of lands equal in amount to the 16th and 36th sections; the grant to take effect when the status of the lands was fixed by survey, and they were capable of identification.

In *Church of the Holy Trinity vs. U. S.*, 143 U. S. 459-461:36 L. Ed. 228, Mr. Justice Brewer says:

> It is a familiar rule that a thing *may be within the letter of the statute and yet not within the statute, because not within its spirit,* nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. As said in Plowden, 205: "From which cases it appears that the sages of the law heretofore have construed statutes

quite contrary to the letter in some appearances, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it; and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded upon the *intent of the Legislature*, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances." * * * We cannot suppose such to have been actual intent. To adopt such a construction would put a stop to the ordinary business of life. The language of the Act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the Act must be so construed as to avoid the absurdity. The Court must restrain the words. The object designed to be reached by the Act must limit and control the literal import of the terms and phrases employed."

And the same opinion, quoting with approval from *U. S. vs. Kirby*, 74 U .S. 482, 486, says:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the Legislature intended exceptions to its language which would avoid results of this character. *The reason of the law in such cases should prevail over its letter.* The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The common sense accepts the ruling, cited by Plowden, that the statute of 1st. Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.'

Ozawa vs. U. S., 260 U. S. 194:67 L. Ed. 207, opinion by Mr. Justice Southerland, says:

> It is the duty of this court to give effect to the *intent of Congress.* Primarily this intent is ascertained by giving the words their natural significance; but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, *sacrificing, if necessary, the literal meaning* in order that the purpose may not fail. See *Church of the Holy Trinity vs. United States*, 143 U. S. 457, 36 L. Ed. 226, 12 Sup. Ct. Rep. 511; *Heydenfeldt vs. Daney Gold & S. Min. Co.*, 93 U. S. 634, 638, 23 L. Ed. 995, 996, 13 Mor. Min. Rep. 204. We are asked to conclude that Congress, without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of § 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always therefore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government—a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions—would have been deprived of its force in such dubious and casual fashion. We are, therefore, constrained to hold that the Act of 1906 is limited by the provisions of § 2169 of the Revised Statutes.

Fid. Sav. Co. vs. Fawcett, 22 F. (2d.) 591, Court of Appeals, D. C., opinion by Associate Justice Robb:

> Our duty is to give effect to the *intent of Congress*, and this intent is to be ascertained by giving to the words of the statute their natural significance, unless this would lead to an unreasonable result plainly at variance with the policy of the legislature. *Ozawa*

vs. United States, 260 U. S. 178, 194, 43 S. Ct. 65, 67 L. Ed. 199.

Respectfully submitted,

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